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Summary record of the 1139th meeting

Topic:
Representation of States in their relations with international organizations

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which could, in the eyes of third parties as well as of the parties to the dispute, invest the chairman of the conciliation commission with all the necessary authority. That was absolutely essential, since it was too often overlooked that the same person could not appear in a case both as judge and party.

95. Mr. RUDA, explaining his vote, said that he had abstained from voting on paragraph 3 for the reasons which he had stated at the previous meeting.¹⁵

96. Mr. ALCÍVAR, explaining his vote, said that he had voted in favour of paragraph 6, though he hoped the commentary would mention the final sentence in the original paragraph 6 (A/CN.4/L.174/Add.3) which read: "The report shall not be binding upon the participating States or upon the Organization", but which had been deleted.

The meeting rose at 1 p.m.

¹⁵ See 1137th meeting, para. 48.

1139th MEETING

Monday, 19 July 1971, at 3.10 p.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Ushakov, Sir Humphrey Waldock.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 to 3; A/CN.4/240 and Add.1 to 7; A/CN.4/241 and Add.1 to 6; A/CN.4/L.162/Rev.1; A/CN.4/L.174/Add.4 and 5)

[Item 1 of the agenda]

(continued)

FOURTH REPORT OF THE WORKING GROUP

Draft articles on observer delegations to organs and conferences and paragraphs 1(9) and 1(10) of article 1 (Use of Terms) of the consolidated draft articles

ARTICLE A and paragraphs 1(9) and 1(10) of article 1 (Use of Terms)

1. The CHAIRMAN invited the Commission to consider the Working Group's draft articles on observer

delegations to organs and conferences, contained in its fourth report (A/CN.4/L.174/Add.4 and 5), commencing with article A.

2.

Article A

Use of terms

(a) "observer delegation to an organ" means the delegation sent by a State to observe on its behalf the proceedings of the organ;

(b) "observer delegation to a conference" means the delegation sent by a State to observe on its behalf the proceedings of the conference;

(c) "observer delegation" means, as the case may be, the observer delegation to an organ or the observer delegation to a conference;

(d) "sending State" means the State which sends:

...

(iii) an observer delegation to an organ or an observer delegation to a conference;

(e) "observer delegate" means any person designated by a State to attend as an observer the proceedings of an organ or of a conference (A/CN.4/L.174/Add.5).

3. Mr. KEARNEY (Chairman of the Working Group) said that the foreword (A/CN.4/L.174/Add.4) to the Working Group's fourth report explained the manner in which the Working Group had established the texts of twenty-three draft articles designated A to W on observer delegations. The fundamental assumption on which those articles were based was that an observer delegation would consist of one or two observers and that its functions would be strictly confined to observation.

4. The Working Group had decided to present those articles as a separate set, to be annexed to the consolidated draft articles, because governments and secretariats of international organizations had not yet had an opportunity to express their views on them. The articles had, however, been so drafted as to facilitate their integration into the consolidated draft if it were so decided either by the General Assembly or by a future conference of plenipotentiaries.

5. A small correction should be made to the title so that it read "Observer delegations to organs and to conferences"; that would bring it into line with the title of Part III.

6. The first article, dealing with the use of terms, was numbered article A; the provisions of sub-paragraphs (a) and (b) described the meaning of the terms "observer delegation to an organ" and "observer delegation to a conference" in such a manner as to stress that those delegations had simply the function of observation. Sub-paragraph (c) dealt with the term "observer delegation", which covered both observer delegations to organs and observer delegations to conferences. The purpose of sub-paragraph (d) was to insert in the definition of "sending State" an additional passage to cover the sending State of an observer delegation. Sub-paragraph (e) dealt with the meaning of "observer delegate", as being a person who was a member of an observer delegation.

7. Mr. ROSENNE said he noticed that, as explained in paragraph 4 of its foreword (A/CN.4/L.174/Add.4),

the Working Group proposed amendments (A/CN.4/L.174/Add.5), to paragraphs 1(9) and 1(10) of article 1.¹ He would like to know whether those amendments would be examined together with article A, with which they were connected.

8. Also, since it was suggested that the present set of articles should constitute an annex, he would like to know whether the proposed amendments to paragraphs 1(9) and 1(10) of article 1 would stand, regardless of the General Assembly's decision on articles A to W.

9. Mr. KEARNEY (Chairman of the Working Group) said that it was indeed the intention to submit articles A to W in the form of an annex, leaving open the question of how the General Assembly might deal with those articles.

10. He agreed that it would be advisable to deal, in conjunction with article A, with the Working Group's proposal to reword paragraphs 1(9) and 1(10) of article 1 (Use of terms) to read:

"(9) 'delegation to an organ' means the delegation sent by a State to participate on its behalf in the proceedings of the organ;

"(10) 'delegation to a conference' means the delegation sent by a State to participate on its behalf in the proceedings of the conference." (A/CN.4/L.174/Add.5)

11. The purpose of those amendments was to bring out the distinction between a delegation to an organ and a delegation to a conference more clearly than was the case with the texts of those sub-paragraphs given in the Working Group's second report (A/CN.4/L.174/Add.2). Those earlier texts referred to a delegation sent by a State "to represent it" in an organ or at the conference. The wording now proposed referred to a delegation sent by a State "to participate on its behalf" in the proceedings of the organ or of the conference.

12. Mr. ROSENNE said that there had been an intentional lack of symmetry between the original wording of paragraph 1(9), which described a "delegation to an organ" as meaning the delegation sent by a State to represent it in the organ, and paragraph 1(10), which described a "delegation to a conference" as meaning the delegation sent by a "participating" State to represent it at the conference.

13. That subtle difference had been discussed when the Commission had considered article 1 at its 1130th and 1131st meetings, and also at the 1135th meeting, when the Commission had discussed the text of article 11 submitted by the Working Group on second reading. On those occasions, it had been explained on behalf of the Working Group that the deliberate lack of symmetry was intended to allow for the great variety of delegations to organs. It was for that reason that the term "participating State" had not been used in the original text of paragraph 1(9). It was, however, used in paragraph 1(10) because the position in the case of conferences was more

clear-cut; the term "participating State" had in that context the same technical meaning as in the 1969 Vienna Convention on the Law of Treaties.

14. He would therefore urge that paragraphs 1(9) and 1(10) of article 1 be left unchanged because their original wording served to bring out the great variety of situations covered by the term "delegation to an organ". They included the case of a State member of an organization which was not a member of the organ and that of a State which was not a member of the Organization at all.

15. As far as article A was concerned, he suggested the insertion, in sub-paragraph (b), after the words "by a State", of the words "not participating in the conference". No similar change would of course be made in sub-paragraph (a).

16. Mr. USHAKOV said that, apart from the new series of articles on observer delegations, the Working Group had considered that the definitions in article 1, paragraphs (9) and (10) should be amended to stress the function of participation in an organ or a conference rather than the function of representation, since the latter was common to all delegations of all kinds. Not only were the proposed new definitions more consistent with the facts, but they brought out clearly the distinction between participating States and other States.

17. Mr. AGO said that the need to amend the definition in article 1, paragraphs (9) and (10), had appeared even more obvious when the Working Group had come to draw a distinction between observer delegations and delegations proper. The definition in paragraph (9) in particular did not exclude observer delegations, since the function of any delegation was to represent the sending State; but it was intended to cover only delegations of States which participated in the proceedings of an organ, regardless of whether they were members of the Organization and of the organ, members of the Organization only but invited to take part in the proceedings of the organ, or even invited to take part in the proceedings of the organ though not members of the Organization, as might happen in the Security Council, for example. In every case the essential point to be brought out was participation in the proceedings.

18. The Commission as well as the Working Group had failed to notice a contradiction between the definition of "delegation" in paragraph (9) and the definition of "delegate" in paragraph (19), where it was stated that a delegate participated in the proceedings of an organ or of a conference. The definitions relating to observer delegations brought out even more clearly the fact that observer delegations did not participate in the proceedings of organs or of conferences.

19. Mr. ROSENNE said he did not think it was correct to draft paragraphs (9) and (10) in a way that maintained in the definitions an exact parallelism between the two types of delegation. There was a very substantive difference between a delegation participating in a conference—which was clear-cut, and a delegation observing a conference—which was also clear-cut, and those various

¹ See 1130th meeting, para. 13 and 1131st meeting, para. 49.

shades of participation and non-participation and being present and being represented and so on at a meeting of an organ.

20. For instance, he was not convinced that a delegation of a Member of the United Nations which was not a member of the Security Council which participated in a meeting of the Security Council as of right under Article 31 of the Charter was, strictly speaking, an observer delegation. The extreme parallelism which was now proposed for paragraphs (9) and (10), and which was matched in definitions A (a) and A (b), did not adequately reflect the real situation.

21. Mr. KEARNEY (Chairman of the Working Group) said that a delegation sent by a Member of the United Nations which was not a member of the Security Council to participate in the proceedings of that Council under Article 31 of the Charter would not be an observer delegation within the meaning assigned to the term "observer delegation to an organ" by sub-paragraph (a) of article A.

22. Mr. BARTOŠ said he agreed with Mr. Rosenne. There was a difference between States which sent an observer delegation to the Security Council and those which, under the Charter or the rules of procedure of the Security Council, took part in the Security Council's discussions but were not entitled to vote and were not regarded as observers. It was, therefore, an oversimplification to classify as observers all States which did not participate in the decisions or organs; the exceptional situation of those which participated in the discussions without being entitled to vote should also be taken into consideration.

23. Sir Humphrey WALDOCK said that it had never been in the minds of the members of the Working Group that a delegation attending Security Council proceedings under Article 31 of the Charter would be considered as an observer delegation. Such a delegation was not merely observing the proceedings; it was actually "participating" in them without vote, as the language of that Article expressly stated.

24. Mr. USHAKOV said that the new definitions proposed in paragraphs (9) and (10) brought out better than the previous texts the fact that the delegations with which they dealt participated in the proceedings of the organs or of the conference and consequently were not observers, any more than were the States referred to in Articles 31 and 32 of the Charter which, though not members of the Security Council, were invited to participate in its proceedings without vote, whether or not they were Members of the United Nations.

25. Mr. ROSENNE said that the discussion had gone a long way towards clarifying the position, but he still felt that a certain asymmetry between the definitions of "delegation to an organ" and "delegation to a conference" was necessary. He therefore proposed the deletion of the words "the proceedings of", in paragraph (10) of article 1.

26. Mr. EUSTATHIADES said that the new definitions proposed by the Working Group were a considerable

improvement, because they replaced the notion of representation by the notion of participation in the proceedings; the Commission should retain them.

27. The advantage of the notion of participation was that it covered three possible categories of delegations in the light of the Charter and practice: delegations which participated in the proceedings with the right to vote, delegations which participated in the discussions without the right to vote, and delegations which were allowed to express their views without taking part in the discussions.

28. It was not possible to speak of "participation" without mentioning proceedings, since observers too exercised that kind of participation. The text proposed by the Working Group should preferably, therefore, be retained as it stood and an explanation should be given in the commentary of the various types of participation involved.

29. Mr. USHAKOV said that it was States which participated in the proceedings and delegations which participated in the conference, so that the words "the proceedings of" in paragraph (10) could be deleted.

30. Mr. SETTE CÂMARA said the Working Group's redraft of paragraphs (9) and (10) of article 1 established a clearer distinction between observer delegations to organs and to conferences respectively.

31. He saw no reason to discuss the problem of Article 31 of the Charter. The representatives of a Member State attending the proceedings of the Security Council under the Charter were by no means observers; they participated in the work of the Council.

32. He fully supported the proposed article A, particularly the emphasis placed on the main function of an observer delegation, which was simply to observe certain proceedings.

33. Mr. KEARNEY (Chairman of the Working Group) said that he realized the need to cover the point raised by Mr. Rosenne.

34. The proposed wording for paragraphs 1(9) and 1(10) of article 1 had the disadvantage of using the same language to describe two different types of delegations, and the same was true of paragraphs (a) and (b) of article A. An observer delegation to an organ had in fact more limited functions than an observer delegation to a conference. One method of bringing out that difference might be to replace the concluding portion of paragraph (a) by some such wording as: "to participate in the proceedings of the organs to the extent permitted by the rules of procedure of that organ".

35. Mr. CASTRÉN said that the new definitions proposed for paragraphs (9) and (10) were a great improvement. Since, however, there were several forms of participation and an observer participated in fact in a conference—though not in the same way as an ordinary delegation—to an even greater degree if given the right to express its views, it would be preferable to maintain the words "participate in the proceedings" and to explain clearly in the commentary the difference

between observer delegations and ordinary delegations.

36. In the definitions in paragraphs (a) and (b) of the French version of article A, the word "*observer*" should be replaced by the word "*suivre*", which was the word used in paragraph (e), in order to avoid stating a self-evident fact. The same change might be made in the English version, where the words "to observe" would be replaced by the words "to attend".

37. Mr. THIAM said that the Working Group had rightly wished to draw a distinction between the functions of observation and of participation, but in reality, the notion that an observer participated in the proceedings of a conference could not be entirely discarded. It would be better, therefore, as Mr. Eustathiades had proposed, to explain in the commentary what was meant by participation and to set out the various degrees of participation which might be entailed.

38. Mr. AGO, referring to the comments of Mr. Rosenne and Mr. Kearney on the possibility of introducing a shade of difference between the definitions in paragraphs (9) and (10), said that, in his opinion, Mr. Kearney's proposal could not be accepted because it would equally apply to many other articles, and in the case of conferences too.

39. To say simply, as Mr. Rosenne proposed, "to participate on its behalf in the conference" would be a good way out, because there was only one form of participation in a conference, whereas participation in the proceedings of an organ assumed various forms. He could therefore accept the amendment proposed by Mr. Rosenne.

40. Mr. USHAKOV said he formally seconded Mr. Rosenne's proposal for the deletion of the words "in the proceedings of" in paragraph (10).

41. Mr. KEARNEY (Chairman of the Working Group) said that he would not press his suggestion to amend the concluding words of sub-paragraph (b). Instead he would support Mr. Rosenne's proposal to delete the words "the proceedings of" in paragraph 1 (10).

42. Mr. EUSTATHIADES asked whether the explanations he had suggested would be placed in the commentary, even if Mr. Rosenne's amendment were adopted.

43. The CHAIRMAN said he could assure him that they would. He would now put Mr. Rosenne's amendment for the deletion of the words "the proceedings of", in paragraph 1 (10), to the vote.

Mr. Rosenne's amendment was adopted by 10 votes to 2, with 5 abstentions.

44. The CHAIRMAN put article 1, paragraph (9), and paragraph (10) as amended, to the vote.

Article 1, paragraph (9), and paragraph (10) as amended, were adopted by 16 votes to none, with 2 abstentions.

45. The CHAIRMAN put article A to the vote.

Article A was adopted by 17 votes to none.

46. Mr. EL-ERIAN, explaining his vote, said that he wished to make a clear distinction between juridical participation and physical participation. For example, Article 35, paragraph 2, of the Charter stated: "A State which is not a member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter". In such a case, the State might participate physically in the meeting of the Security Council or of the General Assembly, and might even speak, but that would not amount to juridical participation.

ARTICLE B (Sending of observer delegations)

ARTICLE C (Appointment of the observer delegates)

ARTICLE D (Letters of appointment of the observer delegates)

ARTICLE E (Appointment of the observer delegation and

ARTICLE T (Privileges and immunities of other persons)

47. The CHAIRMAN invited Mr. Kearney, Chairman of the Working Group, to introduce articles B to E (A/CN.4/L.174/Add.5).

48.

Article B²

Sending of observer delegations

A State may send an observer delegation to an organ or to a conference in accordance with the rules and decisions of the Organization.

49.

Article C³

Appointment of the observer delegates

Subject to the provisions of article 71, the sending State may freely appoint the observer delegates.

50.

Article D⁴

Letters of appointment of the observer delegates

The letters of appointment of the observer delegates shall be issued either by the Head of State or by the Head of Government or by the Minister for Foreign Affairs, or, if the rules of the Organization or the rules of procedure of the conference so admit, by another competent authority of the sending State. They shall be transmitted, as the case may be, to the Organization or to the conference.

51.

Article E⁵

Composition of the observer delegation

1. The observer delegation shall consist of one or more observer delegates.

2. With the consent of the host State, it may include additional personnel.

² Corresponds to article 41.

³ Corresponds to article 42.

⁴ Corresponds to article 43.

⁵ Corresponds to article 44.

52. Mr. KEARNEY (Chairman of the Working Group) said that article B was the same rule as that laid down in article 41 concerning delegations to organs and conferences.

53. Article C differed from article 42 in that the latter referred to articles 45 and 71, while article C referred only to article 71; article 45 referred to the size of a standard delegation and was not referred to in article C because of the changes which had been made with respect to the composition of observer delegations.

54. Article D followed the same approach as that used with respect to the members of regular delegations.

55. Article E was a combination of provisions concerning the composition and size of observer delegations. The Working Group had decided to eliminate the long list of representatives, members of the diplomatic staff and the like, in order to simplify the draft. If additional staff should be necessary, it would be covered by paragraph 2.

56. Mr. BARTOŠ said he regretted that article E did not mention the diplomatic staff of the observer delegation. It was true that it spoke of "additional personnel", but that was a very vague expression to use where a matter of such great practical importance was concerned.

57. Mr. EL-ERIAN said that the point made by Mr. Bartoš should be mentioned in the commentary, namely, that the meaning of the term "additional personnel" was clear in the light of the other parts of the draft articles.

58. The CHAIRMAN asked if members wished to take a single vote on articles B to E.

59. Mr. BARTOŠ asked for a separate vote on article E.

60. The CHAIRMAN put articles B, C and D to the vote.

Articles B, C and D were adopted by 15 votes to none.

61. The CHAIRMAN invited the Commission to consider article E.

62. Mr. USHAKOV proposed that the word "shall" be replaced by the word "may" in paragraph 1, in order to express the fact that the sending State had a faculty in the matter.

63. He also proposed that paragraph 2 be amended to read: "With the consent of the host State, it may also include personnel."

64. Mr. BARTOŠ said that in his view the provision in paragraph 2 was quite impracticable because it would mean that the consent of the host State would have to be obtained to bring in a typist or a cipher clerk.

65. Mr. CASTRÉN said that he entirely agreed with Mr. Bartoš that paragraph 2 was too strict. The sending State should be free to include junior staff.

66. Mr. KEARNEY (Chairman of the Working Group)

said that in drafting article E, the Working Group had been anxious not to overload it with a long list of different classes of persons who might be present in the observer delegation. He would not, however, have any objection to a specific reference to secretarial assistants, although the consent of the host State would be necessary if the sending State wished to include diplomatic, technical, administrative and private staff in the observer delegation.

67. Mr. USHAKOV said that the Working Group had been thinking more of privileges and immunities than of the composition of the observer delegation. Perhaps the following wording would meet the point made by Mr. Bartoš: "With the consent of the host State, it may also include personnel consisting of persons enjoying privileges and immunities".

68. Mr. BARTOŠ said that to stipulate the consent of the host State amounted to giving it a power of veto and restricting the freedom of action of the sending State.

69. He had already reminded the Commission⁴ of what had happened after the First and again after the Second World War. It was Clemenceau who had conceived the idea of States with a limited interest in the drawing up of the peace treaties. Those States had only been allowed to express their views through a single observer, whereas the Allied powers had been able to call on all the experts they wanted. The provision was a clear infringement of the principle of the equality of States.

70. Mr. ROSENNE said that it was his understanding that the faculty with respect to the use of the word "may" was exclusively that of the sending State.

71. Mr. BARTOŠ proposed the deletion of the opening words "With the consent of the host State", in paragraph 2. In no event should the sending State be required to seek the blessing of the host State before it could include in its delegation the staff it needed.

72. Mr. KEARNEY (Chairman of the Working Group) said that in that case he feared that it would be necessary to amend several other articles, such as article F, on notifications.

73. Mr. USHAKOV said that paragraph 2 of article E was related to paragraph 2 of article T. If the former were deleted, the latter would lose all meaning.

74. Mr. BARTOŠ said that, in his view, to lay down a general rule to the effect that the additional personnel did not automatically enjoy privileges and immunities, and that those depended on agreement between the host State and the sending State, placed the sending State in the hands of the host State, which might abuse its position. A rule of that kind conflicted both with United Nations practice and with present-day diplomatic practice.

75. Moreover, he did not see why a provision such as that in paragraph 2 of article T had been submitted. If that provision came before the General Assembly, States would be clamouring about the lack of adequate

⁴ See 1122nd meeting, paras. 50 and 51.

safeguards for the personnel of the delegation. For instance, if a cipher clerk of an observer delegation were refused privileges and immunities by the host State, the delegation's cipher would be at the latter's mercy. He felt it was his duty as a jurist to warn the Commission of the practical repercussions of such a dangerous solution.

76. Mr. USHAKOV said that the Working Group had taken into consideration the fact that the task of an observer delegation was not to participate in the work of the body concerned but to act as an observer. Generally speaking, therefore, an observer delegation did not need experts. If that proved necessary in a specific case, however, two courses were open to the sending State: either to appoint an expert observer delegate, which was always possible, or, if it wished the delegation to include personnel in addition to the expert delegate, to conclude an agreement with the host State. The situation was therefore less dramatic than it might seem.

77. Mr. CASTRÉN said he could support Mr. Bartoš proposal on condition that the Commission added to article E a provision on the size of the observer delegation similar to that adopted by it in article 45 in connexion with the size of a delegation to an organ or conference.⁷

78. Mr. USHAKOV said that he thought that wording modelled on the article referred to by Mr. Castrén could be added to paragraph 2 without deleting the words "With the consent of the host State".

79. Mr. REUTER said that, in his opinion, the discussion of paragraph 2 should be combined with the discussion of article T.

80. Sir Humphrey WALDOCK said that he had not been with the Working Group when article T was considered and he was somewhat surprised that the consent of the host State should be the determining factor. He would suggest that some less categorical language be used such as "In addition, with the consent of the host State, it may include further personnel necessary for the performance of its official functions".

81. Mr. AGO said he thought the real problem lay in article T.

82. He was opposed to the addition of wording similar to that adopted by the Commission in article 45, which was too widely drawn to be justifiable for an observer delegation to an organ or conference.

83. Perhaps it would be sufficient to add at the beginning of paragraph 2 some such wording as: "Subject to what is reasonable and normal, it may...". If the consent of the host State was not required, the additional personnel would automatically enjoy the privileges and immunities provided for in the draft articles. If, on the other hand, the consent of the host State was required, the relevant agreement would cover the question of privileges and immunities.

84. Mr. EUSTATHIADES said he supported the view expressed by Mr. Reuter. In any case, the suggestions put forward by Sir Humphrey Waldock and Mr. Ago would probably suffice to reflect the idea which Mr. Castrén sought to express.

85. Sir Humphrey WALDOCK said that he was inclined to agree that the Commission should discuss article E in conjunction with article T.

86. The CHAIRMAN proposed that the Commission consider article T before taking any decision on article E.

It was so decided.

87.

Article T

Privileges and immunities of other persons

1. Members of the families of observer delegates shall, if they accompany such observer delegates, enjoy the privileges and immunities specified in articles M to O and Q to S provided that they are not nationals of or permanently resident in the host State.

2. The situation of any additional personnel of the observer delegation shall be regulated by special agreement between the sending State and the host State (A/CN.4/L.174/Add.5).

88. Mr. KEARNEY (Chairman of the Working Group) said that article T dealt primarily with the privileges and immunities of members of the family of observer delegates. Paragraph 2 dealt with the situation of additional personnel, which was intimately connected with the requirement of the consent of the host State referred to in paragraph 2 of article E. As Mr. Ushakov had pointed out in connexion with that paragraph,⁸ the Working Group had assumed that observer delegations were sent merely for purposes of observation and were usually extremely limited with respect to their composition. In his own experience, they seldom consisted of more than two persons.

89. Mr. BARTOŠ said that observer missions, as defined, did not play a purely passive role but also engaged in important political activity. It was therefore essential that the attribution of privileges and immunities to the additional personnel of observer delegations should not be left to the discretion of the host State.

90. It had taken two centuries to establish guarantees that the representative of the sending State would be accorded privileges and immunities. If a contrary idea were embodied in the draft articles, a principle would have been adopted which would conflict with the whole of international law and even with the Charter, which, in Article 105, stated that representatives of the Members of the United Nations and officials of the Organization should enjoy such privileges and immunities as were necessary for the independent exercise of their functions; they did not enjoy them in their personal interest.

91. Sir Humphrey WALDOCK said that he shared the difficulty referred to by Mr. Bartoš, although to a some-

⁷ See 1133rd meeting, paras. 105 to 107.

⁸ See para. 76 above.

what less extent. He felt that article T must at least include a provision to the effect that any additional personnel should enjoy immunity from jurisdiction in respect of acts performed in the exercise of their official functions.

92. Mr. ROSENNE said that he was grateful to Mr. Bartoš for having raised his point, since the Commission's work might otherwise have been rejected by the General Assembly.

93. He wished to ask the Working Group about the relationship between article I and the apparent veto of the host State referred to in article E. Article I stated that "The Organization or, as the case may be, the Organization and the conference, shall, where necessary, assist the sending State, its observer delegation and the observer delegates in securing the enjoyment of the privileges and immunities provided for in the present articles." How did that article operate if the granting of privileges and immunities was intended to be the exclusive prerogative of the host State?

94. A second question: if the host State did not grant minimum privileges and immunities, did the Working Group envisage that the procedure for consultations would be applicable? If the answer was in the affirmative, it would be necessary to redraft all the articles in order to exclude that apparent right of the host State.

95. Mr. USHAKOV said that article 37 dealt with a specific case and that the régime of privileges and immunities that it established could not be easily transposed.

96. Ultimately, there were two solutions: either to enumerate the various classes of personnel which could form part of an observer delegation—diplomatic, administrative and technical, service and domestic—or to state that observer delegations consisted solely of delegates. In the latter case, the consent of the host State would be necessary for the other members of the personnel. In the former case, the enumeration would be a very long one for a delegation whose sole task was to observe and not to participate in the work of the body concerned.

97. Sir Humphrey WALDOCK said that it had not been in his mind to propose that the Commission should drop article U, which referred to nationals of the host State and persons permanently resident in the host State. He was troubled, however, by the fact that the "other persons" referred to in article T might include experts and confidential secretaries whose privileges and immunities would be at the disposal of the host State. He did not think that the host State could admit persons in an observer delegation, other than private servants, without granting them privileges and immunities in respect of their official acts.

The meeting rose at 6.10 p.m.

1140th MEETING

Tuesday, 20 July 1971, at 10.25 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bedjaoui, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Rosenne, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Ushakov, Sir Humphrey Waldock.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 to 3; A/CN.4/240 and Add.1 to 7; A/CN.4/241 and Add.1 to 6; A/CN.4/L.151; A/CN.4/L.162/Rev.1; A/CN.4/L.173; A/CN.4/L.174/Add.4 and 5)

[Item 1 of the agenda]

(continued)

FOURTH REPORT OF THE WORKING GROUP

(continued)

Draft articles on observer delegations to organs and conferences (continued)

ARTICLE E (Composition of the observer delegation) and ARTICLE T (Privileges and immunities of other persons) (continued)

1. The CHAIRMAN invited the Commission to continue its consideration of articles E and T in the Working Group's fourth report (A/CN.4/L.174/Add.5).
2. Mr. KEARNEY (Chairman of the Working Group) said that there appeared to be serious differences of opinion as to the approach the Commission should take in dealing with observer delegations. One of the problems was that the Secretariat had not produced any full-scale study showing what was the practice concerning such delegations.
3. In view of the broad definition given to the term "delegation", the Working Group had decided that it was dealing with a very limited type of delegation which would exist only on relatively rare occasions and which would normally consist of only one or two persons. He personally was not aware of any customary law whatever concerning observer delegations of that type. He would therefore submit that the Commission had three courses open to it.
4. Either it could follow the line proposed by the Working Group, with some modifications. Or it could say that observer delegations were entitled to all the privileges and immunities enjoyed by regular delegations; in his view, that would be an extreme course for which no basis in international law existed. Or again, it